Supreme Court, U.S.
FILED

09-848 DEC 29 2009

OFFICE OF THE CLERK

No. _____

In The

SUPREME COURT OF THE UNITED STATES

Alvin L. Williams, Ph.D.,
Petitioner,

vs.

Charles A. Thorsen III, M.D.

Respondent.

On Petition For Writ Of Certiorari
To the Illinois Appellate Court,
First District

PETITION FOR A WRIT OF CERTIORARI

Alvin L. Williams
1040 Pitner Ave.
Evanston, IL 60202
(847) 864-4359
Pro Se

QUESTIONS PRESENTED FOR REVIEW

1) Whether the Illinois Appellate Court violated plaintiff's 7th Amendment right afforded by the U.S. Constitution, right of trial by jury when value exceeds twenty dollars, by affirming a summary judgment motion without requiring a properly filed deposition, according to the court's own prior opinion against use of deposition without a signature or signature waiver.

2) Whether the Illinois Appellate Court violated plaintiff's 7th Amendment right of the U.S. Constitution, by affirming a summary judgment motion for respondent, while failing to adhere to Illinois Supreme Court Statutes, 735 ILCS 5/2-622 (trial on merits), and 5/2-1005 (d) (summary determination of major issues), when there are substantive issues of genuine fact present in this case.

3) Whether this Court should review the lack of meaningful and controlling provisions during summary judgment proceedings to avoid abuse, due to the lack of a court reporter, and to require that the bench juxtapose its views to those likely to be had by everyday people, as in a jury body: since summary judgment is like a "mini-trial", and may protect constitutional rights.

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Rule 23 Order of the Illinois Appellate Court, First Judicial District, March 31, 2009, affirming decision of the Cook County Circuit Court, is located in the Appendix, pp. 13-18.

The Order of the Cook County Circuit Court, December 28, 2007, granting respondent summary judgment, is located in Appendix, p. 19.

JURISDICTION

Trial Court of Cook County Circuit Court issued a judgment on December 28, 2007. The Illinois Appellate Court, First District, affirmed the trial court's judgment and issued a Rule 23 Order on March 31, 2009; a timely petition for rehearing was denied on May 11, 2009. On September 30, 2009, the Supreme Court of Illinois denied a petition for hearing. This petition is filed within 90 days of that date. The jurisdiction of this court is invoked under 28 U.S.C. § 1257 (a)

STATEMENT OF THE CASE

In response to petitioner's initial complaint filed February 14, 2006, in Cook County Circuit Court, respondent filed an appearance, requesting a trial by jury. In like-wise fashion, petitioner invoked the 7th Amendment of the U.S. Constitution, by citing Illinois Statute 735 ILCS 5/2-622 in his pleadings throughout the lower courts and arguing for a right to trial by jury on the merits, all of which in essence supports plaintiff-petitioner's right to a jury trial: as to the "common law".[1]

The 7th Amendment states: "In suits at common law where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any court of the United States than according to the common law.

> "Pursuant to *Parsons v. Bedford, Breedlove & Robeson*, 28 U.S. 3 Pet. 433 433 (1830), it is stated: *Although the thrust of the Amendment was to preserve the right to jury trial as it existed in 1791, it has long been settled that the right extends beyond the common law forms of action recognized at that time. Mr. Justice Story established the basic principle in 1830:*
> *"The phrase 'common law,' found in this clause,*

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[1] The alleged causative actions of the respondent also led to the lost of approximately $34,700 in salary income (that respondent tried to label as an ad damnum), and there is a jurisdictional amount of $50,000.

is used in contradistinction to equity, and admiralty, and maritime jurisprudence. . . . By common law, [the Framers of the Amendment] meant . . . not merely suits, which the common law recognized among its old and settled proceedings, but suits in which legal rights were to be ascertained and determined, in contradistinction to those where equitable rights alone were recognized, and equitable remedies were administered. . . . In a just sense, the amendment then may well be construed to embrace all suits which are not of equity and admiralty jurisdiction, whatever might be the peculiar form which they may assume to settle legal rights."
@ 28 U. S. 446-447 (1830) (emphasis in original).

Likewise, the Constitution of the State of Illinois, Article I, Bill of Rights, SECTION 13. TRIAL BY JURY, states: *The right of trial by jury as heretofore enjoyed shall remain inviolate.*

Clearly, as a matter of law, petitioner has a constitutional right to have a trial by jury, as afforded to he by the U.S Constitution, and the Illinois Constitution. The lower courts' avoidance to follow established rules and statutes, appear to obstruct justice and implement decisions so as to orchestrate violation of petitioner's right.

Although this court may not be too concerned so much with how just the decisions were, although substantive issues are involved, however, it is necessary to highlight the actions in order to elicit a clearer understanding of how this violation of right

was maneuvered. Such that, the actions by the courts are integral to the violation end result.

This case involves medical occurrences in which the petitioner suffered his initial stroke on February 14, 2004 due to vascular disease complications and injuries, subsequently, suffering loss of 25% of his eyesight in both eyes.[2] Through angiography and medical doctors analyses, it is learned that plaintiff no longer has a right vertebral artery conducting blood to his brain and a left vertebral artery that is 60-70% stenotic. There is also damage to brain tissues in both hemispheres. After about 20 months of litigation involving excessive motions and discovery[3], respondent brought a summary judgment motion.

In the trial court, rules adhering to proper filing of deposition pursuant to summary judgment for respondent[4], and issues of fact, were not considered in the hearing for summary judgment[5]. Yet the trial court denied hearing any of petitioner's arguments pursuant to issues of genuine fact, issues

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[2] Plaintiff lied helplessly in his car for about 45 minutes, unable to speak or move, and presumed that he was near death: expressed in initial compliant. Medical reports later revealed two episodes of lock-in-state conditions.

[3] Respondent violated rules of discovery, yet the trial court denied to hear petitioner's motion for sanctions. **(R. C01078 - C01225)**

[4] *Urban v. Village of Inverness*, 176 Ill. App. 3d 1, 125 Ill. Dec. 567, 530 N.E.2d 976 (1st Dist. 1988)

[5] 735 ILCS 5/2-1005 (d); trial court identified issues of fact in Conference Management Hearing, March 30, 2007.

that are also in respondent's sworn testimony, and denied to hear, entirely, petitioner's motion to vacate.

In addition, respondent provided absolutely no evidentiary material to enlighten the court that he did anything to follow the standard of care, only an opinion that he complied with the standards and that he did nothing wrong: no affirmative defense.

In fact, respondent in at least two of his pleadings have stated, " ... that he does not have confidence in all guidelines published by ENH": [respondent's medical group of what was Evanston Northwestern Healthcare][6]. Does that mean he has some of his own guidelines?

In the appellate court, a very important fact is that the court misread the contents of the record[7], and did not see that the record does not show that the respondent filed a signature waiver with his deposition, nor did he sign it, or have the deposition properly filed before use of for a summary judgment motion.[8] **(R. C01373)** Petitioner clearly

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[6] Located of late in respondent's appellee brief

[7] The record on appeal contains seven (7) volumes, plus respondent's deposition.

[8] Respondent filed his unsigned deposition on Dec. 19, 2007, without a signature waiver. Petitioner did not acquire the signature waiver until Dec. 21, 2007. Further, respondent never avers that he signed the deposition, or that he filed a signature waiver with the deposition.
In addition, court ignored its own rules for time extension requests for filing of appellee brief, and procedure for motions and response.

articulated this fact in his appellant brief, and the Petition for Rehearing--which was also denied.[9]

One of the main reasons why the record on appeal is so voluminous is because petitioner filed pages and pages of evidentiary medical documents to support his claim, throughout the years of litigation: including many Objections to frivolous pleadings.

Counter-affidavits were also presented at various times. **(R. C01570, C01637)**

REASONS WHY CERTIORARI SHOULD BE GIVEN

I.

The appellate court made a very serious error misreading the record on appeal because without a signed deposition or signature waiver, respondent had no lawful right for a summary judgment. As a result, the appellate court upheld an unjust decision by the trial court which also violates petitioner's 7th Amendment right.**(The deposition is still sealed.)**

In *Urban v. Village of Inverness*, 176 Ill. App. 3d 1, 125 Ill. Dec. 567, 530 N.E.2d 976 (1st Dist. 1988), the Court ruled that in order for a defendant to use his deposition for a summary judgment,

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[9] The appellate court's wording in its Rule 23 Order is strikingly similar to respondent's statements in his appellee brief: supposedly of critical defects in petitioner's appellant brief, and elsewhere. **(See in Appendix)**

defendant must satisfy certain requirements, such that, the defendant must follow the rules with respect to signing, filing, sealing and certification of his deposition, and that failing to file the signature waiver renders the deposition *informal* and *insufficient.*

Furthermore, the appellate court clearly articulated numerous material issues in its Rule 23 Order, and not once did the court articulate what the respondent did to follow the standard of care.

The fact is, the respondent did absolutely nothing in response to petitioner's medical complaints: allegedly, he is, the proximate cause. How then can the appellate court hold the position that substantive issues are not involved. Review is warranted by this Court.

II.

The trial court suggested that the respondent address the issues in a summary judgment. **(R. C00974) (Also see Appendix, p. 20, CMH.)** In respondent's motion, issues were never brought, nor did he successfully controvert any substantive issues of genuine fact, throughout litigation: or that were alleged in petitioner's complaint.

Illinois Statute,**735 ILCS 5/2-1005 (d)**, states: *Summary determination of major issues. If the court determines that there is no genuine issue of material fact as to one or more of the major issues in the case, but that substantial controversy exists with respect to other major issues, or if a party moves for summary*

determination of one or more, but less than all, of the major issues in the case, and the court finds that there is no genuine issue of material fact as to that issue or those issues, the court shall thereupon draw an order specifying the major issue or issues that appear without substantial controversy, and directing such further proceedings upon the remaining undetermined issues as are just. Upon the trial of the case, the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

Pursuant to Illinois Statute, **735 ILCS 5/2-622,** in *Leask v. Hinrichs*, 232 Ill App 3d 845, 523 NE2d 1343, 172 Ill Dec 673 (2nd Dist. 1992),

"Section 2-622 of the Code of Civil Procedure is intended to deter frivolous medical malpractice suits at an early stage, but the section's technical pleading requirements should not be used to deprive a plaintiff of a trial on the merits of a malpractice claim and amendments to medical malpractice pleadings should be liberally allowed so that the case may be decided on its merits".

Since the trial court certainly did not follow either statute, review is warranted by this Court in order to preserve petitioner's constitutional right afforded by the 7th Amendment and IL Statutes.

III.

A petitioner alone, against the respondent and the court, provide much reason for the United

States Supreme Court to reexamine the manner in which summary judgments are carried out and documented, especially when one's constitutional rights are at stake.

In the least, if the lower courts insist on conducting summary judgments, which are likened to trials from the bench, on the other hand, as is done in jury trials, it should be standard practice that a court reporter is present during this "mini-trial". With this suggested provision, an unfair advantage will not confine an unsuspecting pro se litigant with the inability to rebut statements cited, but not made in the hearing.

It would serve the public tremendously, if this Court would review the foregoing in light of this case, and those to be presented in the future.

CONCLUSION

We are a nation of laws. And the United States Constitution is one that this country respects, especially as it relates to the "common law" for its people. Certainly, the very basics of it should remain immutable for the common good, of people.

One can appreciate the use of summary judgments in litigations where there are frivolous complaints, in order to be less burdensome on the courts. However, when there are genuine issues of material fact, as in petitioner's case, it is an abuse to use the summary judgment motion as a tool, and an abuse of discretion, to deny one of his/her 7th Amendment--right to trial by jury. This is

especially important, when the movant does not present any, much less than all, issues of genuine fact in his/her favor.

Petitioner prays that this Honorable Supreme Court of the United States of America, defend this very sacred right deeply imbedded in "our most basic and cherished body of laws": The Constitution of the United States of America.

Based on the foregoing, Petitioner respectfully submits that this Petition for Writ of Certiorari is granted.

Dated: December 28, 2009

Respectfully submitted,

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108637 **SUPREME COURT OF ILLINOIS**
CLERK OF THE COURT
SUPREME COURT BUILDING
SPRINGFIELD,ILLINOIS 62701
(217) 782-2035

September 30, 2009

Dr. Alvin L. Williams, Ph.D.
1040 Pitner Avenue
Evanston, IL 60202

No. 108637 - Alvin L. Williams, Ph.D., petitioner,
v. Charles A. Thorsen, III, M.D.,
respondent. Leave to appeal,
Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on November 4, 2009.

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT - FIFTH DIVISION

Alvin L. Williams, Ph.D.,	)	
	)	
Plaintiff-Appellant,	)	
v.	)	No. 1-08-0294
	)	
Charles A. Thorsen III, M.D.	)	

Defendant-Appellee.

ORDER

This cause coming to be heard on Appellant's Petition for Rehearing, the Court being fully advised in the premises;

IT IS HEREBY ORDERED that the Appellant's Petition for Rehearing is **DENIED.**

S/ Nathaniel R. Howes (?)
JUSTICE

ORDER ENTERED
May 11, 2009
Appellate Court,
First District

S/ John P. Tully
JUSTICE

S/ Margaret O. Frossard
JUSTICE

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FIFTH DIVISION
MARCH 31, 2009

No. 1-08-0294

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ALVIN L. WILLIAMS, Ph.D. Plaintiff-Appellant, v. CHARLES A. THORSEN, III, M.D.) Defendant--Appellee	)Appeal from the) Circuit Court of) Cook County)) No. 06 L 1598))The Honorable) Jeffrey) Lawrence,)Judge Presiding.

ORDER

Plaintiff, Dr. Alvin Williams, brought this medical malpractice action as a pro se litigant against Defendant, Dr. Charles Thorsen. Plaintiff alleges that care and treatment rendered to him by Dr. Thorsen fell below the standard of care and led to a stroke suffered by plaintiff on February 14, 2004. The trial court granted summary judgment in favor of the defendant. This appeal follows.

As a preliminary matter we note that the appellate brief submitted by the plaintiff fails to comply with Supreme Court rules in several

respects. The plaintiff fails to supply the applicable standard of review as required by Supreme Court Rule 341 (h)(3). The plaintiff's statement of the
[Page 2 of Order begins here]
facts fails to state relevant facts necessary to an understanding of the case and contains numerous arguments in violation of Supreme Court Rule 341 (h)(6). The plaintiff's argument fails to cite to relevant authority in violation of Supreme Court Rule 341 (h)(7). It is within our discretion to strike the appellant's brief and dismiss his appeal, however the failures contained in plaintiff's brief do not preclude our review and we decline to impose such a harsh sanction. See In re Detention of :Powell, 217 Ill.2d 123 (2005).

Summary of Case

The plaintiff suffered a stroke on February 14, 2004. Prior to this event, patient had been a patient of the defendant, Dr. Thorsen complaining of neck pain and had a history of elevated blood pressure and high cholesterol. The essence of plaintiff's claim is that Dr. Thorsen failed to diagnose his vascular disease which led to plaintiff's stroke.

The defendant filed a motion for summary judgment contending that he complied with the standard of care in treating the plaintiff. Defendant supported his motion with his own discovery deposition.

Plaintiff failed to submit any affidavits of

documents in opposition to defendants testimony that he complied with the standard of care. Plaintiff clearly articulated in both the trial court and his brief before this court his intent to rely upon defendant, Dr. Thorsen, as his expert witness. Plaintiff argues on appeal that the deposition of Dr. Thorsen contains admissions that unequivocally support plaintiff's allegations.

Discussion

[Page 3 of Order begins here.]

It is well established that in a medical negligence action, the plaintiff bears the burden of proving the standard of care and that the doctor was negligent in failing to comply with that standard of care, causing injury to the plaintiff. Wodziak v. Kash, 278 Ill. App. 3d 826 (1996). A defendant physician may submit his own testimony as evidence of applicable standard of care in support of a motion for summary judgment. Taylor v. City of Berdstown, 142 Ill. App 3d. 584 (1986). When a defendant/physician presents evidence that there was no deviation from the standard of care, and the plaintiff fails to present any evidence to the contrary, the defendant is entitled to a summary judgment as a matter of law. Beals v. Huffman, 146 Ill. App. 3d 3 (1986).

Here, plaintiff has failed to present evidence that the defendant did not comply with the standard of care. The plaintiff recites testimony of the defendant and argues that the testimony supports his allegations that the defendant was negligent.

However, our review of the testimony cited by the plaintiff reveals that the plaintiff is simply incorrect. For example, Plaintiff characterizes deposition testimony that defendant did not start any medications to control plaintiff's high cholesterol as an "admission" that defendant's care was negligent. However, plaintiff fails to establish that the defendant was required by the standard of care to administer medication in this case.

Because plaintiff cites to numerous passages in defendant's deposition which seem to have little significance here, we did a thorough review of defendant's deposition testimony. Despite plaintiff's characterization that the testimony contains admissions and contradictions amounting to impeachment, we found nothing in defendant's deposition that amounts to such. In fact we found no testimony to support any of plaintiff's claims. **[Page 4 of Order begins here]**

Accordingly, we find that summary judgment was properly granted where the defendant presented evidence that he complied with the standard of care in treating the plaintiff and the plaintiff failed to submit any counter-evidentiary material.

The plaintiff raises several further issues which we will briefly address.

First, the plaintiff seems to contend that defendant failed to properly file his deposition in support of his motion for summary judgment. Plaintiff points out that the motion has a file time stamp of 12:21p.m. while the deposition has a file

time stamp of 12:22p.m. It is unclear to this court exactly what defect plaintiff is attempting to illustrate. The record shows that defendant filed his deposition along with a waiver of signature. Moreover, the plaintiff himself relies on the deposition and concedes its authenticity. Accordingly, we find no merit to plaintiff's argument.

Next, Plaintiff contends the trial court erred by not requiring the same notice for pro se litigants that the Seventh Circuit United States Court of Appeals requires under Timms v. Frank, 953 F. 2d 281 (1992). This contention is misplaced. The Timms court's interpretation of the Federal Rules of Civil Procedure has no application in Illinois state courts. Moreover, Timms is not binding upon this appellate court. Again we find no merit to plaintiff's contention.

The plaintiff next contends the trial court did not give him adequate time to respond to defendant's motion for summary judgment. We find this contention to be without merit. The defendant filed his motion for summary judgment on December 19, 2007. The matter was set to be presented on December 28, 2007. Plaintiff filed papers titled "Objections to Defendant's Motion Filed December 19, 2007" on December 24, 2007. Plaintiff also filed a "Response to Motion for Summary Judgment" on December 27, 2007. Clearly plaintiff had sufficient time to **[Page 5 of Order begins here.]** respond to the motion as he submitted two separate filings.

We find the remaining arguments raised by the plaintiff to be without merit as well.

Accordingly, we affirm the judgment of the trial court.

Affirmed.

TULLY, J., with **O'MARA FROSSARD** and **TOOMIN, JJ.**, concurring.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Alvin L. Williams, Ph.D.	)	
	)	
v.	)	**No. 06L1598**
	)	
Charles A. Thorsen, III, M.D.	)	

ORDER

This Cause coming on to be heard on motion of defendant, Charles A. Thorsen, III, M.D., for Summary Judgment, all parties appearing in open court and the Court having considered the written submissions and arguments of both parties:

It is Hereby Ordered:

That defendant's motion for Summary Judgment is hereby granted; Judgment is hereby entered in favor of defendant and against plaintiff and plaintiff's cause is dismissed in its entirety.

Atty. No.: 39049
Name: Michael Webber
Atty. For: Dr. Thorsen
Address: 33 N. Dearborn, Ste 700
City/State/Zip: Chicago, IL 60602
Telephone: 312.327.6366

ENTERED:
Dated: Dec.28 2007
Judge Jeffrey Lawrence
[Stamped]

1 6 0 3

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

FINDING OF FACT: (Court Proceedings)
An excerpt from a Conference Management Hearing conducted by Judge Jeffrey Lawrence in his court room on March 30, 2007

> **THE COURT:** *I Think the best course of action would be to attack this with summary judgment. Essentially what this says, you know, given the liberal construction of this is that the failure to monitor Dr. William[s'] cholesterol causes stroke and vascular injury [a]ffecting his eyesight. That's a fair reading of it. Now, is that off the wall, you know, this is not my area of expertise. I'm going to let it stand and I'm going to Let you address this t o a summary judgment.*
> **(R. C00974)**

At the end of the conference, Honorable Judge Lawrence states (excerpt):

> **THE COURT:** *Tell - - if you talk to a prospective attorney, tell them that the court has refused to dismiss the fourth amended complaint and finds that the certificate of merit meets minimal standards and I'm allowing discovery to go forward. ....*
> **(R. C00976)**

Reported by: Heather M. Chiaro, CSR
License No.: 084-004635

Extract from Respondent's Appellee Brief Showing Glaring Similarities, In One Instance, To the Beginning of the Appellate Court's Rule 23 Order

[Beginning with page 17 of respondent's appellee brief, as stated]

G. PLAINTIFF'S BRIEF ON APPEAL FAILS TO CONFORM TO SUPREME COURT RULE AND SHOULD BE STRICKEN

Plaintiff has failed in multiple aspects to comply with the Supreme Court Rules relating to appellate procedure. These numerous violations, both in their **[beginning of page 18]** *nature and extent, provide an independent basis for this Court to deny the relief sought by plaintiff. City of Chicago v. Latronica Asphalt and Grading, Inc., 346 Ill. App. 3d 264 (1st Dist. 2004)*

In violation of Supreme Court Rule 341 (h)(3), plaintiff had failed to supply the applicable standard on review with citation to authority.

In violation of Supreme Court Rule 341 (h)(6), plaintiff's statement of facts is almost entirely argument, when it is required by Rule to be without argument.

In violation of Supreme Court Rule (h)(7), plaintiff failed to provide relevant authority in multiple arguments.

Finally, in violation of Supreme Court Rule 341 (c), plaintiff failed to provide the required Certificate of Compliance.